



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

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SUPERINTENDENT OF
PUBLIC INSTRUCTION

October 20, 2011

MEMORANDUM

TO: Local and Intermediate School District Superintendents and
Public School Academy Directors

FROM: Carol Wolenberg, Deputy Superintendent *Carol*

SUBJECT: Implications of Changes to the Sex Offender Registry Act (SORA) for Sex
Education

The Michigan Department of Education is notifying all Michigan educators about important changes to the Sex Offender Registry Act that will require public schools that teach sex education to modify one of the required instructional messages.

Since 2004, Michigan public schools that offer reproductive health or sex education have been required to teach specific, age-appropriate content, including information about underage sex and the sex offender registry §380.1507b(2). Effective July 1, 2011, the law related to the sex offender registry changed. These changes will require schools to modify the instructional message related to underage sex and the sex offender registry.

Please read the attached summary of these changes and update your sex education program to include the new instructional message. This information should also be shared with the district's Sex Education Advisory Board.

If you have questions related to the updated instructional message, please contact Laurie Bechhofer, HIV/STD Education Consultant, at bechhoferl@michigan.gov or 517-335-7252. For more information on HIV and sex education in Michigan public schools, please visit the MDE website at www.michigan.gov/hived.

cc: Michigan Education Alliance

Attachment

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Implications of Changes in Sex Offender Registration Act (SORA) for Sex Education in Michigan Public Schools

Effective July 1, 2011

Background:

Public Acts 165 and 166 of 2004 require school districts that offered reproductive health or sex education¹ to include information² informing students about underage sex and the sex offender registry. With changes in the Michigan Sex Offender Registration Act that took effect July 1, 2011, teachers seek guidance in aligning their instructional message with the amended law.

Instructional Message:

The changes to the SORA Act are complex, and the core instructional message that needs to be conveyed to students in an age-appropriate fashion is below.

Old Message

Sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment. One of the other results of being convicted of this crime is to be listed on the sex offender registry on the internet for up to 25 years.

New Message

Sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment. One of the other results of being convicted of this crime may be to be listed on the sex offender registry on the internet for 15 years, 25 years, or life.

A judge determines whether or not a youthful offender can be excused from the requirement of being put on the registry, depending on numerous factors including, but not limited to, the following: 1) whether the offender is being tried as a juvenile or an adult, 2) severity of the offense, 3) ages of the offender and victim, and 4) whether the offender can prove that the sexual act was in fact consensual.

Teacher Reference:

Changes in the Sex Offender Registry

Public Acts 17-19 of 2011 amended Michigan's Sex Offender Registration Act (SORA), effective July 1, 2011.³ The Public Act includes numerous changes to the Sex Offender Registration Act. A rationale and a summary of key changes pertaining to youthful offenders are summarized below.

¹ Instruction in Sex Education, The Revised School Code, §380.1507

² Sex Education and Instruction; Curriculum Requirements, The Revised School Code, §380.1507b(2)
Material and instruction in the sex education curriculum under section 1507 that discusses sex shall be age-appropriate, shall not be medically inaccurate, and shall... (k) Include information clearly informing pupils that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that 1 of the other results of being convicted of this crime is to be listed on the sex offender registry on the internet for up to 25 years.

³ For the major changes in a Frequently Asked Questions format, see Robertson, Thomas (Summer 2011). Changes to Michigan's Sex Offender Registry: 2011 PA 17-19, Effective July 1, 2011, *Michigan Child Welfare Law Journal*, 21-25. Retrieved from http://chanceatchildhood.msu.edu/pdf/CWLJ_su11.pdf.

Rationale for Changes in the Law

Previously, Michigan's Sex Offender Registration Act §28.721 was a "one tier" system. This meant that anyone convicted of a listed sex offense was put on the same registry. The act made no distinctions between dangerous child predators convicted of abusing young children, and teenagers accused of "statutory rape"⁴ for voluntarily consenting to have sex or sexual contact with their underage boyfriend or girlfriend. The updated legislation separates offenders into three tiers, with the most serious on Tier 3. The tiers carry with differing number of years on the Sex Offender Registry ranging from 15 years (tier 1), to 25 years (tier 2), to life (tier 3). The updated law also provides a chance for youthful offenders to avoid the sex offender registry under specific conditions.

What Hasn't Changed

- ☐ The new law does not redefine what constitutes a sexual offense (or any other crime) in Michigan.
- ☐ The age of consent for sex remains 16, and various internet and child pornography statutes are applicable at 18.

What Has Changed

- ☐ The new law allows youthful defenders a chance to avoid being on the sex offender registry, provided that the defendant can prove that the sexual contact was consensual with a partner between 13 and 16 years old, and provided the defendant was not more than four years older than the victim. Note: The burden of proof to be excused from the requirement of being listed on the registry is on the defendant.
- ☐ Offenders cannot be placed on the registry until they reach at least 14 years old.
- ☐ The law allows any person that is currently on the registry for crimes that fit these parameters to petition their judge to be removed from the list.

For More Information

Michigan Public Sex Offender Registry, Michigan State Police
www.mipsor.state.mi.us

Michigan laws, including the Criminal Sexual Conduct statutes
www.michiganlegislature.org

Michigan Resource Center on Domestic and Sexual Violence
www.resourcecenter.info

HIV and Sex Education in Michigan Public Schools
www.michigan.gov/hived

⁴ The Michigan Penal Code section 750.520d(1)(a) defines criminal sexual conduct in the third degree, sometimes referred to as "statutory rape."